

6 Case Plan and Budget

6.1

Budget Package

When you begin work on a legal matter, you must prepare a plan (the “Case Plan”) explaining how you anticipate accomplishing the work for which you have been retained, along with a case/matter budget (the “Budget”) showing the phase-by-phase breakdown of the anticipated cost of legal representation.

The Case Plan and Budget constitute the “Budget Package” and must be submitted together. The Case Plan summarizes the strategy for achieving satisfactory resolution of a matter, while the information provided in the Budget controls costs and the payment of invoices. Except in a case of extreme urgency, the FDIC must approve the Budget before you begin working on the legal matter.

NOTE: *The Budget must be approved by the FDIC before you can be paid for a legal matter.*

The FDIC uses on an on-going basis the cost estimates and other information provided in your Budget to assess cost-effectiveness and measure progress. The Legal Division recognizes that estimates may be affected by changed circumstances; but, because the estimates are used in making business decisions, they must be as accurate as possible.

You must also complete as part of the Budget Package, a Budget Worksheet when fees and expenses are estimated to be greater than \$25,000, or when your Oversight Attorney requests that you do so. If you need to later amend your approved Budget, you must submit an Amended Budget Package (see [Section 6.6](#)). Refer to [Appendices H-K](#) for the relevant Budget forms.

NOTE: *A sample form and worksheet are in [Appendix J](#).*

6.2

Case Plan

Upon commencement of a legal matter, you should discuss the matter with your Oversight Attorney. Then prepare a Case Plan that sets forth the major steps you will take to accomplish asset recovery, or successful defense or prosecution of a case. For litigation matters, the Case Plan outlines the anticipated course of action based on the assumption that the case will go to trial. It also proposes a plan for settlement, unless settlement is clearly inappropriate.

If you are handling a number of cases that are routine and involve similar issues or approaches, you may develop and submit a standardized Case Plan applicable for all such cases. When appropriate, note factors that differ between cases in the Case Plan. The decision to submit a standardized Case Plan will be made in conjunction with your Oversight Attorney.

6.3

Budget

The Budget translates the Case Plan into financial expectations. The Budget should:

Budget Forms

- Conform to the Case Plan;
- Identify specific phases of a case; and
- Estimate the cost of each phase.

There are four types of Budget forms, each corresponding to a specific legal matter type, as follows:

- Appellate (*Refer to [Appendix H.](#)*)
- Bankruptcy (Non-Adversary) (*Refer to [Appendix I.](#)*)
- Litigation/PLS (including Adversary Bankruptcy) (*Refer to [Appendix J.](#)*)
- Non-Litigation/Transactional (also used for Administrative and Resolution/Receivership Matters). (*Refer to [Appendix K.](#)*)

NOTE: *Make sure the Budget conforms to the Case Plan for the legal matter.*

The Budget forms have a certain number of phases. When you submit an invoice to the FDIC, make sure your invoice corresponds to the correct phase(s) of your Budget.

The **Appellate** and **Non-Litigation/Transactional** Budgets have one phase each.

The **Bankruptcy (Non-Adversary)** Budget has three phases:

Phase	Description
Phase I	Investigation and Initial Pleading
Phase II	Pre-Confirmation/Discharge Pleadings, Motions and Discovery
Phase III	Post Confirmation/Post Discharge Matters

The **Litigation/PLS/Adversary** Budget has five phases:

Phase	Description
Phase I	Investigation
Phase II	Initial Pleadings, Responsive Pleadings, Motions and Discovery
Phase III	Pretrial/Trial Preparation
Phase IV	Trial
Phase V	Post-Trial Matters

Completing the Budget Form

Following are the instructions for completing a Budget form.

1. Select the Budget form appropriate for your legal matter.
2. Fill out all requested information on the Budget form.

3. In particular, indicate in the appropriate box whether you are billing at an hourly rate, fixed fee, contingent fee, or under a Task Order Agreement (TOA).
4. Refer to the following table to determine information required for the type of billing you entered.

Rate	Information Required
Hourly	➤ Complete all phases of the budget in which legal fees and expenses are expected.
Fixed Fee	➤ Record the fixed fee as a total without further itemization by phase. ➤ Submit the estimated completion date and allowable related expenses for each phase.
Contingent Fee	➤ Record the contingent fee based on the percentage figure to be used in the contingent fee calculation and the estimated recovery value (or other amount) upon which the percentage figure will be calculated. ➤ Submit the estimated completion date and expenses for each phase.
TOA	➤ Record the appropriate fee.

5. If appropriate, calculate the total estimated number of hours for all service providers for each phase or action.
6. **Sign and date the Budget.**

6.4 Budget Worksheet

For certain bankruptcy and litigation matters, you may need to complete a Budget Worksheet along with the Budget. (*Refer to [Appendix I](#) and [Appendix J](#).*) The Budget Worksheet is a tool to provide your Oversight Attorney with needed details about the cost of legal representation.

You will need to complete a Budget Worksheet when:

- Fees and expenses are estimated to be greater than \$25,000;
or

- Your Oversight Attorney requests the Budget Worksheet.

You do not need to complete a Budget Worksheet for Non-Litigation/Transactional and Appellate Matters unless requested to do so by your Oversight Attorney.

Completing the Budget Worksheet

Following are the instructions for completing a Budget Worksheet.

1. Select the Budget Worksheet appropriate for your legal matter.
2. Fill out all requested information on the Budget Worksheet.
3. In particular, indicate in the space provided the legal fees and expenses for each legal action deemed necessary.
4. Indicate in the space provided the “Estimated Hours for Completion” of each phase.
5. Describe any “other” actions and indicate the estimated total hours and legal fees associated with these “other” actions.
6. Itemize any related expenses for each phase on an attached sheet. **Be certain to include the fees and expenses for experts and other professional service providers.**

Make sure the totals on your Budget Worksheet match the totals on your Budget form.

6.5 Budget Package Submission

Once you have completed the Budget Package, you must submit it to the FDIC for approval. The following steps outline the submission and approval process.

1. Submit the Budget Package as instructed in your referral letter. This package consists of the Case Plan and Budget form and, when necessary, the Budget Worksheet.

NOTE: *If the Budget is in excess of \$100,000, ensure that you are in compliance with the Byrd Amendment by submitting the Byrd Amendment Certification or Disclosure form with your Budget Package. (Refer to [Appendix F](#) for further information.)*

2. Your Oversight Attorney reviews the Budget Package. If it is satisfactory, your Oversight Attorney will recommend approval by the appropriate FDIC delegated authority.
 3. The Legal Division will notify you when the Budget Package is approved.
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6.6

Amended Budget Package

If the approved Budget is not sufficient to complete a case or matter, you must submit an amended Budget Package. You should do this as soon as you anticipate that the approved Budget is not likely to be sufficient. Do not wait until after you have exceeded the approved Budget.

Written approval from the Legal Division is required for any increase in the approved Budget. Make sure the amendment has been approved before you exceed the Budget. The Legal Division allows exceptions to this policy only when extraordinary circumstances arise.

NOTE: *Failure to obtain written FDIC approval for an Amended Budget will be deemed a serious breach of your duty to the FDIC and may result in non-payment or disallowance of fees or expenses exceeding authorized amounts. You must report to your Oversight Attorney immediately any anticipated Budget changes.*

An Amended Budget Package contains:

- Amended Case Plan, or explanatory narrative.
- Amended Budget form.
- Amended Budget Worksheet (required when fees and expenses are estimated to be greater than \$25,000, when one was submitted with prior Budget Package, or when the Oversight Attorney requests a worksheet).

Refer to [Appendix J](#) for sample Amended Budget forms and Budget Worksheets.

NOTE: *If the Amended Budget exceeds \$100,000, make sure that you are in compliance with the Byrd Amendment. Refer to [Appendix F](#). If the previous Budget exceeded \$100,000, it is not necessary to submit another Byrd Amendment Certification.*

Completing the Amended Budget Package

Following are the instructions for completing an amended Budget Package.

1. Prepare a separate narrative explaining the reasons for the amendment.
2. If necessary, prepare an amended Case Plan that provides detail commensurate with the significance of the legal matter. For Litigation and PLS matters the amended Case Plan should summarize revised strategy and project the schedule for preparing and trying the case, including all expected litigation events.
3. Select the Amended Budget form appropriate to your legal matter.

4. Fill out all requested information on the Amended Budget form, in a manner similar to the original Budget form.
5. Mark the appropriate box if you have submitted a previous amended budget.
6. Use the most recent approved figures in the column for “Current Budget.”
7. **Sign and date the Amended Budget.**

*Completing the
Amended Budget
Worksheet*

Following are the instructions for completing an Amended Budget Worksheet.

1. Select the Amended Budget Worksheet appropriate for your legal matter.
2. Fill out all requested information on the Amended Budget Worksheet.
3. Mark the appropriate box if you have submitted a previous Amended Budget.
4. Use the most recent approved figures in the column for “Current Budget.”
5. Indicate in the space provided the Estimated Hours for Completion of each phase.
6. Describe any “other” actions and indicate the estimated total hours and legal fees associated with these “other” actions.
7. Itemize any related expenses for each phase on an attached sheet. **Be certain to include the fees and expenses for experts and other professional service providers.**

Make sure the totals on your Amended Budget Worksheet match the totals on your Amended Budget form.

6.7**Amended Budget
Package
Submission**

Once you have completed the Amended Budget Package, you must submit it to the FDIC for approval. The following steps outline the submission and approval process.

1. Submit the Amended Budget Package in the same manner as your original Budget Package, as instructed in your referral letter. This package consists of the amended Case Plan and Amended Budget Form and, when necessary, the Amended Budget Worksheet. Also include the Byrd Amendment Certification or Disclosure form if fees and expenses now exceed \$100,000.
 2. Your Oversight Attorney reviews the Amended Budget Package. If it is satisfactory your Oversight Attorney will recommend approval by the appropriate FDIC delegated authority.
 3. The Legal Division will notify you when the Amended Budget Package is approved.
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